

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:MAN:3:POSTF-130103-02

KVDoce

date: JUN 28 2002

to:

ATTN:

from: Area Counsel, LMSB
(Financial Services)

subject:

Form 872 - Taxable Year

Consent to Extend the Statute of Limitations on Assessment
Statute of Limitations Expires: September 15,
UIL Nos. 6501.08-00, 6501.08-17

This memorandum responds to your request of June 4, 2002. This memorandum should not be cited as precedent. You requested advice on the proper execution of a Form 872 to extend the statute of limitations on assessment of tax of ("") for the taxable year. The advice rendered in this memorandum is conditioned on the accuracy of the facts presented to us. This advice is subject to National Office review. We will contact you within two weeks of the date of this memorandum to discuss the National Office's comments, if any, about this advice.

Issue

What is the proper phrasing of the taxpayer's name for the Form 872 Consent to Extend the Time to Assess Tax against for the consolidated return it filed as parent for its affiliated group?

Conclusion

The proper phrasing of the taxpayer's name for the Form 872 Consent to Extend the Time to Assess Tax against for the consolidated return it filed as parent for its affiliated group is " ".

Facts

The following facts were provided to us by the case agent. Currently, [REDACTED] is a wholly owned subsidiary of the [REDACTED] ("REDACTED"). [REDACTED] is an indirect wholly owned subsidiary of [REDACTED] ("REDACTED"). Prior to [REDACTED], [REDACTED] was [REDACTED]% indirectly owned by [REDACTED]. During this period, [REDACTED] filed consolidated returns as the common parent for its own affiliated group, including the return at issue, which [REDACTED] filed on [REDACTED]. On [REDACTED], [REDACTED] became a [REDACTED]% [REDACTED] owned subsidiary of [REDACTED]. As a result, [REDACTED] filed consolidated returns as a member of [REDACTED]'s affiliated group from [REDACTED] to [REDACTED]. On [REDACTED], [REDACTED] re-domesticated to [REDACTED]. As a result, [REDACTED] resumed filing consolidated returns as the common parent for its own affiliated group from [REDACTED] to [REDACTED]. In [REDACTED], [REDACTED] acquired [REDACTED] and renamed the company [REDACTED]. Consequently, [REDACTED] contributed [REDACTED] to [REDACTED]. As a result, [REDACTED] filed consolidated returns as a member of [REDACTED]'s affiliated group from [REDACTED] to date.

Discussion

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. This exception provides that the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations. The Service uses Form 872 to memorialize such consent.

In the case of a consolidated group, guidance as to the appropriate entity to enter into a consent to extend the statute of limitations on assessment for income tax can be found in the consolidated return regulations. Treas. Regs. §1.1502-1 et seq.¹ Pursuant to the consolidated return regulations, the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas.

¹ All cites to Treas. Regs. §1.1502 are to the regulations that were in effect for the [REDACTED] taxable year. We note that we have reviewed the Consolidated Return Regulations that went into effect on June 27, 2002 (T.D. 9002) and opine that those amendments do not alter the legal advice stated in this memorandum.

Reg. §1.1502-77(a). The common parent in its name will give waivers, and any waiver so given shall be considered as having been given or executed by each subsidiary. Treas. Reg. §1.1502-77(a). Unless there is an agreement to the contrary, an agreement entered into by the common parent extending the time within which an assessment of tax may be made for the consolidated return year shall be applicable to each corporation which was a member of the group during any part of such taxable year. Treas. Reg. §1.1502-77(c).

The common parent remains the agent for the members of the group for any year during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group. Treas. Reg. §1.1502-77(a); Southern Pacific v. Commissioner, 84 T.C. 395, 401 (1985). As a general rule, the common parent remains the proper party to extend the statute of limitations for income tax for any taxable year for which it was the common parent, as long as it remains in existence. Section 1.1502-77T of the Temporary Income Tax Regulations, provides that if a corporation that is a common parent of a group ceases to be the common parent, it still may execute an effective waiver of the statute of limitations as to any year which it was the common parent. T.D. 8226, 1988-2 C.B. 325, 327. Therefore, a waiver given by [REDACTED] will be effective. The proper phrasing of the taxpayer's name for the Form 872 Consent to Extend the Time to Assess Tax against [REDACTED] for the [REDACTED] consolidated return it filed as parent for its affiliated group is "[REDACTED]".

Procedural Considerations

Please note that Section 3461 of the I.R.S. Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service, each time that it requests a taxpayer to extend the limitations period, to advise the taxpayer of the right (i) to refuse to extend the statute of limitations on assessment, or, in the alternative, (ii) to limit an extension to particular issues or for specific periods of time. To satisfy this requirement, you should provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the consent. You should also document your actions in this regard in the case files.

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the IRM. Specifically, the IRM requires use of Letter 907(DO) to solicit a Form 872, Letter 928(DO) as a follow-up letter to Letter 907(DO) (when appropriate), and Letter 929(DO) to transmit

a copy of the executed consent to the taxpayer. IRM Handbook No. 25.6.22 and No. 25.6.22.3. Dated copies of both letters should be retained in the case file(s) as directed. When the signed Form 872 is received from the taxpayer, the authorized manager should promptly sign and date it in accordance with Treasury Regulation § 301.6501(c)-1(d) and IRM, Handbook No. 25.6.22.5.10. The manager must also update the respective statute of limitations in the continuous case management statute control files and properly annotate Form 895 or equivalent. IRM, Handbook No. 25.6.22.5.11(1)(g). In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Should you have any questions regarding this matter, please contact Keith Doce of this office at (212) 436-1290.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ROLAND BARRAL
Area Counsel, LMSB
(Financial Services)

By: _____

KEITH V. DOCE
Attorney (LMSB)